AN ORDINANCE BY

THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AS SUBSTITUTED BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO REPEAL ORDINANCE 07-0-2135 WHICH AMENDED SECTION 10-12, AND REPEALED SECTIONS 10-208 AND 10-222 OF THE CITY OF ATLANTA CODE OF ORDINANCES IN ORDER TO STRENGTHEN EFFORTS TO CURB UNDERAGE DRINKING BY PROHIBITING EMPLOYEES AND ENTERTAINERS UNDER THE AGE OF TWENTY-ONE FROM ENTERING CERTAIN PREMISES LICENSED FOR THE CONSUMPTION OF ALCOHOL ON THE PREMISES, TO REENACT THE LANGUAGE OF THE CITY OF ATLANTA CODE OF ORDINANCES AS IT EXISTED BEFORE THE PASSAGE OF ORDINANCE 07-0-2135; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, Ordinance 07-O-2135, attached hereto as Exhibit A, which was adopted by the Atlanta City Council on October 15, 2007 and approved by the Mayor on October 22, 2007, amended section 10-12 and repealed section 10-222 and 10-208 in order to strengthen efforts to curb underage drinking by prohibiting employees and entertainers under the age of twenty-one from entering certain premises licensed for the consumption of alcohol on the premises; and

WHEREAS, five individuals between ages of 18 and 21 who worked as adult entertainers brought a constitutional challenge to Ordinance 07-O-2135, and the Superior Court of Fulton County, T. Jackson Bedford, Jr., J., upheld the constitutionality of ordinance; and

WHEREAS, the individuals appealed to the Georgia Supreme Court and on September 28, 2009, the Georgia Supreme Court declared that Ordinance 07-O-2135 violated the State Constitution's Uniformity Clause in that it prohibited persons aged 18 to 21 from entering in or remaining at premises of licensed establishments where they were legally entitled to hold jobs involving handling alcoholic beverages in accordance with O.C.G.A. § 3-3-23(e)(1), See *Willis v. City of Atlanta*, 285 Ga. 775, 684 S.E. 2d 271 (2009), a copy of which is attached hereto as Exhibit B; and

WHEREAS, in accordance with the Georgia Supreme Court's ruling, it is the desire of the City of Atlanta to repeal Ordinance 07-O-2135 in its entirety, and reenact the language of the City of Atlanta Code of Ordinances as it existed before the passage of Ordinance 07-O-2135.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That Ordinance 07-O-2135 adopted by the Atlanta City Council on October 15, 2007 and approved by the Mayor on October 22, 2007 is hereby repealed.

SECTION 2: That Chapter 10, Article I, Section 10-12 of the City of Atlanta Code of Ordinances which reads:

No person under the age of 21 years shall enter, remain in or loiter on any licensed premises, as herein defined, licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any licensee or either such licensed premises, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.

This section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises in accordance with O.C.G.A. § 3-3-24(b). However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

be amended such as Chapter 10, Article I, Section 10-12, of the City of Atlanta Code of Ordinances shall read as follows:

No person under the age of 21 years shall enter, remain in or loiter on any licensed premises, as herein defined, licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any licensee or either such licensed premises, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.

Provided, however, it is lawful for persons who are 18 years of age or older that provide entertainment to enter and to remain in any licensed premises, but only during and in the course of their employment as entertainers. Provided further, that it is lawful for persons who are 18 years of age or older to sell, serve, possess or dispense alcoholic beverages in the course of their employment in any licensed premises in accordance with O.C.G.A. § 3-3-24(a), or in any other place where alcoholic beverages are lawfully present, so long as such place is the place of employment for such person under 21 years of age.

This section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises in

accordance with O.C.G.A. § 3-3-24(b). However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

SECTION 3: That Chapter 10, Article II, Division 5, Section 10-208, which was repealed in its entirety by Ordinance 07-O-2135, and which formerly pertained to entertainment by underage persons as enacted by Code 1977, § 14-2124(c) be amended such that Section 10-208 shall read as follows:

10-208. Entertainment by underage persons.

It shall be unlawful for any person under the age of 18 years to provide entertainment in an establishment licensed under this article unless such person has obtained written permission from such person's legal guardian.

SECTION 4: That Chapter 10, Article II, Division 5, Section 10-222, which was repealed in its entirety by Ordinance 07-O-2135, and which formerly pertained to underage persons on licensed premises as enacted by Code 1977, § 14-2143, be amended such that Section 10-208 shall read as follows:

10-222. Underage persons on licensed premises.

- (a) As used in this section, the term "underage person" means a person under 18 years of age.
- (b) No person who holds a license to sell alcoholic beverages shall allow any underage person to be in, frequent or loiter about the premises of the licensee unless accompanied by a parent or legal guardian. However, underage persons shall be permitted in restaurants or private clubs without being accompanied by a parent or legal guardian. This section shall not apply to underage persons who are employees as authorized under this chapter.

SECTION 5: All other ordinances or parts of ordinances and resolutions, in conflict with this ordinance are hereby repealed, and are no longer of any force and effect.

SECTION 3: This Ordinance shall be and become effective immediately upon and after its passage and publication as required by governing law.

AN ORDINANCE BY

THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO REPEAL ORDINANCE 07-0-2135 WHICH AMENDED SECTION 10-12, AND REPEALED SECTIONS 10-208 AND 10-222 OF THE CITY OF ATLANTA CODE OF ORDINANCES IN ORDER TO STRENGTHEN EFFORTS TO CURB UNDERAGE DRINKING BY PROHIBITING EMPLOYEES AND ENTERTAINERS UNDER THE AGE OF TWENTY-ONE FROM ENTERING CERTAIN PREMISES LICENSED FOR THE CONSUMPTION OF ALCOHOL ON THE PREMISES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, Ordinance 07-O-2135, attached hereto as Exhibit A, which was adopted by the Atlanta City Council on October 15, 2007 and approved by the Mayor on October 22, 2007, amended section 10-12 and repealed section 10-222 and 10-208 in order to strengthen efforts to curb underage drinking by prohibiting employees and entertainers under the age of twenty-one from entering certain premises licensed for the consumption of alcohol on the premises; and

WHEREAS, five individuals between ages of 18 and 21 who worked as adult entertainers brought a constitutional challenge to Ordinance 07-O-2135, and the Superior Court of Fulton County, T. Jackson Bedford, Jr., J., upheld the constitutionality of ordinance; and

WHEREAS, the individuals appealed to the Georgia Supreme Court and on September 28, 2009, the Georgia Supreme Court declared that Ordinance 07-O-2135 violated the State Constitution's Uniformity Clause in that it prohibited persons aged 18 to 21 from entering in or remaining at premises of licensed establishments where they were legally entitled to hold jobs involving handling alcoholic beverages in accordance with O.C.G.A. § 3-3-23(e)(1), See *Willis v. City of Atlanta*, 285 Ga. 775, 684 S.E. 2d 271 (2009), a copy of which is attached hereto as Exhibit B; and

WHEREAS, in accordance with the Georgia Supreme Court's ruling, it is the desire of the City of Atlanta to repeal Ordinance 07-O-2135 in its entirety.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

<u>Section 1</u>: That Ordinance 07-O-2135 adopted by the Atlanta City Council on October 15, 2007 and approved by the Mayor on October 22, 2007 is hereby repealed.

 $\underline{\textbf{SECTION}}$ **2:** That all ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.



CITÝ COUNCIL ATLANTA, GEORGIA

07-O-

AN ORDINANCE BY

07- 🗷 -2135

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AN ORDINANCE TO AMEND THE PROVISION OF THE CITY OF ATLANTA CODE OF ORDINANCES FORBIDDING PERSONS UNDER SPECIFIED AGES FROM ENTERING, REMAINING IN, OR LOITERING AT CERTAIN LICENSED PREMISES AS CODIFIED IN CHAPTER 10, ARTICLE I, SECTION 10-12 ENTITLED "PERSONS UNDER SPECIFIED AGES FORBIDDEN TO ENTER, REMAIN IN OR LOITER AT CERTAIN LICENSED PREMISES", TO STRENGTHEN EFFORTS TO CURB UNDERAGE DRINKING; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, the City of Atlanta has an interest in regulating, through the lawful exercise of its police powers, the sale of alcoholic beverages within its territorial limits; and

WHEREAS, the City of Atlanta has an important and substantial interest in combating the problem of underage drinking; and

WHEREAS, it is the desire of the City of Atlanta to strengthen its efforts to curb underage drinking; and

WHEREAS, the City of Atlanta is concerned that those under the age of 21 are drinking or purchasing alcohol from certain premises that are licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; and

WHEREAS, the City of Atlanta believes that prohibiting individuals under the age of 21 from entering certain licensed premises is a reasonable means to prevent the sale of alcohol to underage persons;

WHEREAS, Chapter 10, Article I, Section 10-12, of the City of Atlanta Code of Ordinances currently allows persons who are 18 years of age or older, who provide entertainment or who are otherwise employed in any licensed premises, to remain in any licensed premises, during and in the course of their employment as entertainers or other such employment; and

WHEREAS, Chapter 10, Article I, Section 10-13 of the City of Atlanta Code of Ordinances currently enumerates exceptions to the prohibitions contained in Chapter 10, Article I, Section 10-12 of the City of Atlanta Code of Ordinances which shall not be restricted hereby;

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS, as follows:

Section 1: That Chapter 10, Article I, Section 10-12, of the City of Atlanta Code of Ordinances which reads:

No person under the age of 21 years shall enter, remain in or loiter on any licensed premises, as herein defined, licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any licensee or either such licensed premises, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.

Provided, however, it is lawful for persons who are 18 years of age or older that provide entertainment to enter and to remain in any licensed premises, but only during and in the course of their employment as entertainers. Provided further, that it is lawful for persons who are 18 years of age or older to sell, serve, possess or dispense alcoholic beverages in the course of their employment in any licensed premises in accordance with O.C.G.A. § 3-3-24(a), or in any other place where alcoholic beverages are lawfully present, so long as such place is the place of employment for such person under 21 years of age.

This section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises in accordance with O.C.G.A. § 3-3-24(b). However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

be amended such as Chapter 10, Article I, Section 10-12, of the City of Atlanta Code of Ordinances shall read as follows:

No person under the age of 21 years shall enter, remain in or loiter on any licensed premises, as herein defined, licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any licensee or either such licensed premises, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place.



This section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises in accordance with O.C.G.A. § 3-3-24(b). However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

Section 2: That Chapter 10, Article II, Division 5, Section 10-208, of the City of Atlanta Code of Ordinances entitled "Entertainment by underage persons" is hereby repealed and deleted in its entirety.

Section 3: That Chapter 10, Article II, Division 5, Section 10-222, of the City of Atlanta Code of Ordinances entitled "Underage persons on licensed premises" is hereby repealed and deleted in its entirety.

Section 4: Should it be found that any ordinance or parts of any ordinance are in conflict herewith, then those sections contained herein shall be deemed controlling.

A true copy,

ADOPTED by the City Council APPROVED by the Mayor

OCT 15, 2007 OCT 22, 2007

Municipal Clerk

Page 1

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H

Supreme Court of Georgia.
WILLIS et al.
v.
CITY OF ATLANTA et al.
No. S09A1081.

Sept. 28, 2009.

Background: Five individuals between ages of 18 and 21 who worked as adult entertainers brought constitutional challenge to city ordinance prohibiting persons under age of 21 from entering, remaining in, or loitering at any business licensed for sale of alcoholic beverages by drink at retail or for consumption on premises. The Superior Court, Fulton County, <u>T. Jackson Bedford</u>, <u>Jr.</u>, J., upheld constitutionality of ordinance. Individuals appealed.

Holding: The Supreme Court, <u>Hunstein</u>, C.J., held that ordinance violated uniformity clause of state constitution.

Reversed.

West Headnotes

Intoxicating Liquors 223 211

223 Intoxicating Liquors
 2231 Power to Control Traffic
 223k9 Delegation of Powers
 223k11 k. Concurrent and Conflicting
 Regulations by State and Municipality. Most Cited
 Cases

Intoxicating Liquors 223 € 15

223 Intoxicating Liquors
 223II Constitutionality of Acts and Ordinances
 223k15 k. Licensing and Regulation. Most
 Cited Cases

Statutes 361 € 72

361 Statutes
361II General and Special or Local Laws

361k70 Uniformity of Operation of General Laws

361k72 k. Persons and Corporations. Most Cited Cases

Statutes 361 € 76(5)

361 Statutes

36111 General and Special or Local Laws
361k76 Applicability of General Law as Affecting Validity of Special or Local Law

361k76(5) k. Sales of Intoxicating Liquors. Most Cited Cases

City ordinance prohibiting persons under age of 21 from entering, remaining in, or loitering at any business licensed for sale of alcoholic beverages by drink at retail or for consumption on premises violated uniformity clause of state constitution; ordinance directly impaired operation of general statutes relating to handling of alcoholic beverages by underaged persons as a part of their employment by prohibiting persons aged 18 to 21 from entering in or remaining at premises of licensed establishments where they were legally entitled to hold jobs involving handling alcoholic beverages. West's Ga.Const. Art. 3, § 6, Par. 4(a); West's Ga.Code Ann. §§ 3-3-23(e)(1), 3-3-24(a).

**272 Alan I. Begner, Cory Goldsmith Begner, Begner & Begner, P.C., Atlanta, for appellant.

Elizabeth B. Chandler, Jerry L. DeLoach, Amber A. Robinson, Atlanta, for appellee.

HUNSTEIN, Chief Justice.

*775 This appeal involves a constitutional challenge to a City of Atlanta ordinance that prohibits persons under the age of 21 from entering, remaining in or loitering at any business licensed for the sale of alcoholic beverages by the drink at retail or for consumption on the premises. Appellants are five young women between the ages of 18 and 21 who work as adult entertainers and are employed as performers at a business to which the ordinance applies. Appellees are the City of Atlanta and its mayor (hereinafter, "the City"). For the reasons that follow, we hold that the trial court erred by upholding the constitutionality of the ordinance.

684 S.E.2d 271

285 Ga. 775, 684 S.E.2d 271, 09 FCDR 3044

(Cite as: 285 Ga. 775, 684 S.E.2d 271)

1. As an initial matter, the City's motion to transfer this case to the Court of Appeals is denied. Contrary to the City's contention, this Court has jurisdiction in "all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question." (Emphasis supplied.) Art. VI, Sec. VI, Par. II, Ga. Const. 1983. Appellees' reliance on Savannah TV Cable Co. v. Mayor etc. of Savannah, 225 Ga. 821, 171 S.E.2d 498 (1969) is misplaced because that case predates the 1983 Constitution that first provided for this Court's jurisdiction over constitutional challenges to ordinances, see Art. VI, Sec. VI, Par. II, supra, and thus has not constituted valid precedent for over 25 years.

2. The challenged ordinance, City of Atlanta Code of Ordinances § 10-12, provides, in pertinent part, that

[n]o person under the age of 21 years shall enter, remain in or loiter on any licensed premises ... licensed for the sale of alcoholic beverages by the drink at retail, or sale of alcoholic beverages for consumption on the premises; nor shall any *776 licensee [or employee] permit or allow any person under the age [of 21] to remain in or loiter in or about such place. FN1

> FN1. The ordinance then recognizes that it does not apply to persons covered by OCGA § 3-3-24(b) (persons under 18 years of age employed in supermarkets, convenience stores, breweries or drugstores not prohibited from selling or handling alcoholic beverages that are sold for consumption off the premises).

Notwithstanding the blanket prohibition established in § 10-12, another City ordinance contains so many exceptions to its prohibition, see City of Atlanta Code of Ordinances, § 10-13, that only a handful of businesses are actually affected by § 10-12. Among those few businesses not excepted by § 10-13 are ones that offer adult entertainment, such as the nightclub where appellants work.

**273 Appellants assert that § 10-12 violates Art. III, Sec. VI, Par. IV(a) of the Georgia Constitution of 1983, FN2 in that it is a local law that conflicts with and is thus preempted by the general law set forth in OCGA § 3-3-24(a). That statute provides that "[n]o person shall allow or require a person in his employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverages." The trial court disagreed, ruling that OCGA § 3-3-24(a) is a "law of prohibition and not one primarily of permission," in that it "only permits people over the age of eighteen to serve alcohol by negative implication. It does not mandate that people over the age of eighteen must be allowed to serve alcohol." Based on this construction of OCGA § 3-3-24, the court concluded that § 10-12 did not conflict with and thus was not preempted by general law.

> FN2.Art. III, Sec. VI, Par. IV(a), known as the uniformity clause, provides that

[I]aws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

The clause's first provision

follows the preemption rule ... by precluding local or special laws when general laws exist on the same subject.... The clause's second provision provides for an exception to the general rule of preemption when general law authorizes the local government to act and the local ordinance does not conflict with the general law. We have concluded that there was no conflict when the local law did not impair the general law's operation but rather augmented and strengthened it.

(Footnotes omitted.) Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 275(2), 507 S.E.2d 460 (1998).

We hold that the trial court erred in its interpretation of OCGA § 3-3-24(a) because it failed to consider that statute in pari materia with OCGA § 3-3-23(e)(1). See generally Butterworth v. Butterworth, 227 Ga. 301, 303-304, 180 S.E.2d 549 (1971) (setting forth the

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"elementary rule of statutory construction" that statutes "in pari materia," i.e., statutes relating to the same subject matter, must be construed together). Both OCGA §§ 3-3-23(e) and 3-3-24*777 relate to the same subject matter, namely, the dispensing, serving, selling or handling of alcoholic beverages by underaged persons as a part of their employment. Indeed, OCGA § 3-3-23(e) specifically references OCGA § 3-3-24, as it provides that

[i]f such conduct is not otherwise prohibited pursuant to <u>Code Section 3-3-24</u>, nothing contained in this Code section shall be construed to prohibit any person *under 21 years of age* from: (1) Dispensing, serving, selling, or handling alcoholic beverages as a part of employment in any licensed establishment.

(Emphasis supplied.) OCGA § 3-3-24, as quoted above, specifically targets only the conduct of persons under 18 years of age in its prohibition. Thus, when these two statutes are read together, it is clear that the Legislature's intent is to allow persons who are over the age of 18 but not yet 21 years old to dispense, serve, sell or handle alcoholic beverages as part of their employment. To do so, persons within that age group must necessarily be permitted to enter licensed establishments where such beverages are dispensed, served, sold or handled. Hence, § 10-12 directly impairs the operation of these general statutes by prohibiting persons aged 18 to 21 from entering in or remaining at the premises of licensed establishments where they are legally entitled to hold jobs that involve dispensing, serving, selling or handling alcoholic beverages. It follows that the trial court erred by rejecting appellants' challenge under Art. III, Sec. VI, Par. IV(a) to the City's ordinance. FN3 See generally Franklin County v. Fieldale Farms Corp., 270 Ga. 272(2), 507 S.E.2d 460 (1998) (local law preempted when it conflicts with general law by impairing the general law's operation).

<u>FN3.</u> Our holding thus renders it unnecessary to address the trial court's rulings on the other constitutional challenges raised by appellants.

Judgment reversed.

All the Justices concur. Ga.,2009. Willis v. City of Atlanta 285 Ga. 775, 684 S.E.2d 271, 09 FCDR 3044

END OF DOCUMENT

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE	ATTN: BERNARD THOMAS		
Legislative Counsel (Signature):	Amber A. Robinson		
Contact Number:(404) 330-64	494		
Originating Department:Department	artment of Law		
Committee(s) of Purview: Pu	ublic Safety and Legal Administration		
Council Deadline: Cycle 5			
	Date(s): March 9, March 30, 2010		
Anticipated Full Council Date:_	April,19, 2010		
Commissioner Signature			
Jerry L. De Loach, Deputy City Attorney Chief Procurement Officer Signature			
		AMENDED SECTION AND 10-222 OF ORDINANCES IN O CURB UNDERAGE D AND ENTERTAINER FROM ENTERING C	REPEAL ORDINANCE 07-O-2135 WHICH 10-12, AND REPEALED SECTIONS 10-208 THE CITY OF ATLANTA CODE OF ORDER TO STRENGTHEN EFFORTS TO PRINKING BY PROHIBITING EMPLOYEES UNDER THE AGE OF TWENTY-ONE ERTAIN PREMISES LICENSED FOR THE ALCOHOL ON THE PREMISES; AND FOR
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Mayor's Staff Only			
Received by CPO:(date)			
Received by Mayor's Office:(date)			
Submitted to Council: (date)			